

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 2:00CR7-01
(STAMP)

RICHARD ALLEN SMITH, JR.,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING MOTION TO ORDER GOVERNMENT
TO DISCLOSE GRAND JURY TRANSCRIPTS

I. Background

Defendant Richard Allen Smith, Jr., who is appearing pro se,¹ was found guilty by a jury for the Northern District of West Virginia of the following eight counts contained in a superseding indictment: conspiracy to distribute crack cocaine (Count 1s); knowing possession of a firearm by a convicted felon (Count 5s and 44s); aiding and abetting the use, carrying, and brandishing of a firearm during and in relation to a drug trafficking offense (Counts 39s and 46s); distribution of crack cocaine (Counts 40s and 41s); and aiding and abetting the assault, resistance, and impeding an officer (Count 45s). The defendant was sentenced to 262 months imprisonment on Counts 1s, 40s and 41s; 120 months imprisonment on Counts 5s and 44s; 36 months imprisonment on Count 45s, all to run concurrently; 84 months imprisonment on Count 39s to run

¹"pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

consecutively to the sentences imposed on Counts 1s, 5s, 40s, 41s, 44s, and 45s; and 300 months on Count 46s to run consecutively to the sentences imposed on Counts 39s and all other counts for a total sentence of 646 months imprisonment. The defendant appealed his conviction to the United States Court of Appeals for the Fourth Circuit, which affirmed the defendant's conviction and sentence. The defendant's petition for writ of certiorari with the United States Supreme Court was denied.

Recently, the defendant filed a motion to order the government to disclose grand jury transcripts stemming from his indictment issued on April 13, 2000. The government filed a response to which the defendant did not reply. For the reasons set forth below, this Court denies the defendant's motion to disclose grand jury transcripts.

II. Applicable Law

Granting a request for grand jury transcripts is within the sound discretion of the court. See United States v. Walczak, 783 F.2d 852, 857 (9th Cir. 1986). Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure set forth instances where a court may authorize disclosure of grand jury information. The court should permit disclosure of grand jury transcripts to a defendant "when the party seeking them has demonstrated that a 'particularized need exists which outweighs the policy of secrecy.'" Id. (quoting Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959)). As discussed in Douglas Oil Co. of Cal. v. Petrol Stops N.W., 441

U.S. 211, the "[p]arties seeking grand jury transcripts under Rule 6(e) must show that the material they seek is needed to avoid the possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed."

III. Discussion

This Court finds the government's argument persuasive that the material the defendant seeks is subject to the secrecy provisions of Rule 6(e) of the Federal Rules of Criminal Procedure. In his motion, the defendant states that such grand jury transcripts are necessary to propose a motion to dismiss due to false and misleading information presented to the grand jury. The defendant, however, has not demonstrated that his need for the grand jury transcript outweighs the policy of secrecy under Rule 6(e).

Furthermore, as the government notes, because the defendant exercised his right to have a jury trial, the defendant, through counsel, was provided with the grand jury testimony of all witnesses appearing in his case. Thus, the defendant already has in his possession, or has access to, the grand jury transcripts that he now seeks.

IV. Conclusion

For the reasons set forth above, the defendant's motion to order government to disclose grand jury transcripts is hereby DENIED.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the
pro se defendant by certified mail and to counsel of record herein.

DATED: June 23, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE